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110TH CONGRESS  
2D SESSION

# S. 2812

To amend title XVIII of the Social Security Act to improve the provision of telehealth services under the Medicare program.

## IN THE SENATE OF THE UNITED STATES

APRIL 3, 2008

Mr. CONRAD (for himself and Ms. STABENOW) introduced the following bill; which was read twice and referred to the Committee on Finance

## A BILL

To amend title XVIII of the Social Security Act to improve the provision of telehealth services under the Medicare program.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Medicare Telehealth Improvement Act of 2008”.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Increase in number of types of originating sites.
- Sec. 3. Expansion of practitioners eligible to furnish telehealth services.
- Sec. 4. Improvement of process for updating the list of telehealth services.

1 **SEC. 2. INCREASE IN NUMBER OF TYPES OF ORIGINATING**  
 2 **SITES.**

3 (a) INCREASE.—Section 1834(m)(4)(C)(ii) of the So-  
 4 cial Security Act (42 U.S.C. 1395m(m)(4)(C)(ii)) is  
 5 amended by adding at the end the following new sub-  
 6 clauses:

7 “(VI) A skilled nursing facility  
 8 (as defined in section 1819(a)).

9 “(VII) A renal dialysis facility.

10 “(VIII) A community mental  
 11 health center (as defined in section  
 12 1861(ff)(3)(B)), a qualified commu-  
 13 nity program described in 1913(b)(1)  
 14 of the Public Health Service Act, and  
 15 a county mental health clinic.

16 “(IX) Any other site that has a  
 17 telecommunications system.”.

18 (b) NO FACILITY FEE FOR CERTAIN ORIGINATING  
 19 SITES.—Section 1834(m)(2) of the Social Security Act  
 20 (42 U.S.C. 1395m(m)(2)) is amended—

21 (1) in subparagraph (B), in the matter pre-  
 22 ceding clause (i), by striking “With respect” and in-  
 23 serting “Subject to subparagraph (D), with respect”;  
 24 and

25 (2) by adding at the end the following new sub-  
 26 paragraph:

1           “(D) NO FACILITY FEE FOR CERTAIN  
2           ORIGINATING SITES.—

3           “(i) IN GENERAL.—No facility fee  
4           shall be paid to an originating site de-  
5           scribed in paragraph (4)(C)(ii)(IX).

6           “(ii) NO CHANGE IN PAYMENT TO  
7           DISTANT SITE.—Clause (i) shall not be  
8           construed to affect the payment to a dis-  
9           tant site under subparagraph (A).”.

10       (c) EFFECTIVE DATE.—The amendments made by  
11 this section shall apply to services furnished on or after  
12 the date that is 90 days after the date of enactment of  
13 this Act.

14 **SEC. 3. EXPANSION OF PRACTITIONERS ELIGIBLE TO FUR-**  
15 **NISH TELEHEALTH SERVICES.**

16       (a) IN GENERAL.—Section 1834(m) of the Social Se-  
17 curity Act (42 U.S.C. 1395m(m)) is amended—

18           (1) in paragraph (1), by striking “(as defined  
19           in section 1861(r)) or a practitioner (described in  
20           section 1842(b)(18)(C))” and inserting “or a practi-  
21           tioner”; and

22           (2) in paragraph (4), by striking subparagraph  
23           (E) and inserting the following new subparagraph:

24           “(E) PRACTITIONER.—The term ‘practi-  
25           tioner’ means—

“(i) a practitioner described in section 1842(b)(18)(C);

“(ii) a physical therapist (as described in section 1861(p));

“(iii) an occupational therapist (as so described);

“(iv) a qualified speech-language pathologist (as defined in section 1861(l)(3)(A));

“(v) a qualified audiologist (as defined in section 1861(l)(3)(B));

“(vi) a certified provider (as described in section 1861(qq)(2)(A)); and

“(vii) any other individual or entity determined appropriate by the Secretary.”.

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall apply to services furnished on or after the date that is 90 days after the date of enactment of this Act.

**SEC. 4. IMPROVEMENT OF PROCESS FOR UPDATING THE LIST OF TELEHEALTH SERVICES.**

(a) **IN GENERAL.**—Section 1834(m)(4)(F)(ii) of the Social Security Act (42 U.S.C. 1395m(m)(4)(F)(ii)) is amended by adding at the end the following sentences: “Such process shall require the Secretary to take into ac-

1 count the recommendations of the Telehealth Advisory  
2 Committee (as established under section 4(b) of the Medi-  
3 care Telehealth Improvement Act of 2008) when adding  
4 or deleting services (and HCPCS codes). If the Secretary  
5 does not implement a recommendation of the Telehealth  
6 Advisory Committee, the Secretary shall publish in the  
7 Federal Register a statement regarding the reason such  
8 recommendation was not implemented.”.

9 (b) TELEHEALTH ADVISORY COMMITTEE.—

10 (1) ESTABLISHMENT.—On and after the date  
11 that is 6 months after the date of enactment of this  
12 Act, the Secretary of Health and Human Services  
13 (in this subsection referred to as the “Secretary”)  
14 shall have in place a Telehealth Advisory Committee  
15 (in this subsection referred to as the “Advisory  
16 Committee”) to make recommendations to the Sec-  
17 retary on the appropriate addition or deletion of  
18 services (and HCPCS codes) to those specified in  
19 paragraph (4)(F)(i) of section 1834(m) of the Social  
20 Security Act (42 U.S.C. 1395m(m)) for authorized  
21 payment under paragraph (1) of such section.

22 (2) MEMBERSHIP; TERMS.—

23 (A) MEMBERSHIP.—

(i) IN GENERAL.—The Advisory Committee shall be composed of 7 members, to be appointed by the Secretary, of whom—

(I) five shall be practicing physicians; and

(II) two shall be practicing non-physician health care providers.

(ii) REQUIREMENTS FOR APPOINTING MEMBERS.—In appointing members of the Advisory Committee, the Secretary shall—

(I) ensure that each member has prior experience with the practice of telemedicine or telehealth;

(II) give preference to individuals who are currently providing telemedicine or telehealth services;

(III) ensure that the membership of the Advisory Committee represents a balance of specialties and geographic regions; and

(IV) take into account the recommendations of stakeholders.

(B) TERMS.—The members of the Advisory Committee shall serve for such term as the Secretary may specify.

1           (3) MEETINGS.—The Advisory Committee shall  
2       meet twice per year and at such other times as the  
3       Advisory Committee may provide.

4           (4) PERMANENT COMMITTEE.—Section 14 of  
5       the Federal Advisory Committee Act (5 U.S.C.  
6       App.) shall not apply to the Advisory Committee.

7           (5) WAIVER OF ADMINISTRATIVE LIMITA-  
8       TION.—The Secretary shall establish the Advisory  
9       Committee notwithstanding any limitation that may  
10      apply to the number of advisory committees that  
11      may be established (within the Department of  
12      Health and Human Services or otherwise).

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